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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,756	02/08/2001	John Howard Pasch	67052	4659

22242 7590 12/11/2003

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/779,756

Applicant(s)

PASCH ET AL.

Examiner

Lien T Tran

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-- The **MAILING DATE** of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bajracharya et al (6001405) in view of Taylor (4597972) and Nauth et al (6110509).

Bajracharya et al disclose a shelf-stable pre-cooked filled pasta product and a process for preparing it. The pasta is prepared from a dough comprising 70-95% flour, about 2-20% wheat gluten, 15-35% water. Dehydrated egg material may be included in an amount up to about 22% and glyceryl monostearate is added in amount of from .5-5%. The dough is acidified to a pH as high as 5.5. The pasta is filled with a filling having a pH as high as 5.5. The pastas are pasteurized under modified atmospheric condition. The flour used is durum or wheat flour. The pasta has a moisture content of 40-55% after partial drying.

Bajracharya et al do not teach adding nisin-containing culture whey and the way in which the nisin-containing culture whey is obtained.

Taylor discloses nisin as an antibotulinal agent for food products. He teaches to use nisin to control heat-resistant spore of *Clostridium botulinum* and low acid foods with pH values above about 4.5 are susceptible to *C. Botulinum* growth. (See col. 1)

Nauth et al teach a method to obtain the nisin containing whey (see col. 3)

Since the Bajracharya et al is a low acid food products which are known to be susceptible to *C. botulinum* growth, it would have been obvious to one skilled in the art to add nisin as taught by Taylor to obtain the benefit taught by Taylor which in turn makes the Bajracharya et al safer for consumption and further enhances the shelf stability of the product. As the amounts, this can be done by experimenting with different amounts to determine the one which will give the most optimum result. One

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can follow the teaching of Taylor as a guideline to determine the appropriate amount. As to the way to obtain the nisin, it would have been obvious to use any known method to obtain the nisin. The method claimed is known as shown by Nauth et al. The nisin as taught by Nauth et al is advantageous to the Bajracharya et al since the nisin is contained in the whey which will further increase the protein content of the pasta product; this further enhances the nutritious value of the product. The new limitation of "fully hydrate" does not define over Bajracharya et al. While the Bajracharya et al product is subjected to a partial drying step, the product is still a high moisture content product. Bajracharya et al disclose the product has a moisture content of 40-55% after partial drying. Page 11 of the specification discloses the fully hydrated pasta product has a moisture content of 50-60%; thus, the Bajracharya et al product is a fully hydrated product. With respect to the limitation "which does not require rehydration before consumption", this is directed to how the pasta product is used and is not a difference in the product. Bajracharya et al disclose the product requires rehydration before consumption, this rehydration is equivalent to the claimed warm and serve because the Bajracharya et al product is fully cooked and fully hydrated like the claimed product. Rehydration in Bajracharya et al in boiling water; the specification discloses the claimed product can be warmed in a boiling water bath. Thus, the difference between rehydration and warming is only in the terminology. Applicant states the warming in the water bath is merely to warm the pasta and such warming is done without removing the pasta from the sealed pouch. The claims do not contain any limitation on warming without removing the pasta from the sealed pouch. However the product is used is not

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a difference in the product. The Bajracharya et al product is a fully cooked and fully hydrated product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Tuesday, Wednesday and Friday. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

December 7, 2003


LIEN TRAN
PRIMARY EXAMINER
